

REMARKS

Claims 2-7 and 20 were pending in the Application. Claims 2-7 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Berg et al. (U.S. Patent Application Publication No. 2002/0116475) (hereinafter "Berg") in view of Colby et al. (U.S. Patent No. 6,006,264) (hereinafter "Colby").

Claims 6 and 20 are cancelled without prejudice or disclaimer. Hence, claims 2-5 and 7 are pending in the Application. Applicants cancelled claims 6 and 20 only to expedite the issuance of claims 2-5 and 7 and not in response to the Examiner's cited art. Applicants are not conceding in this application that cancelled claims 2-5 and 7 are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the subject matter (claims 2-5 and 7) indicated by the Examiner as being allowable (see below). Applicants respectfully reserve the right to pursue these and other claims in one or more continuation patent applications.

The amendments to claim 2 were to advance prosecution and are not an admission that these amendments were necessary to overcome the Examiner's cited art. Claim 2 was amended to be rewritten in independent form. Further, claim 2 was amended to incorporate the limitations of claim 6. Additionally, claim 2 was amended to include the aspect of "wherein said bundling information occurs after a particular number of connections have been closed" per the Examiner's request. A description of an embodiment of this aspect may be found at least in part on page 18, lines 1-2 of Applicants' Specification. Further, claim 7 was amended to be commensurate with the claim amendments to claim 2. Hence, no prosecution history estoppel arises from the amendments to claims 2 and 7. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 U.S.P.Q.2d 1705, 1711-12 (2002); 56 U.S.P.Q.2d 1865, 1870 (Fed. Cir. 2000). Further, the amendments made to claims 2 and 7 were not made for a substantial reason related to patentability and therefore no prosecution history estoppel arises from such amendments. *See Festo Corp.*, 62 U.S.P.Q.2d 1705 at 1707 (2002); *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 41 U.S.P.Q.2d 1865, 1873 (1997).

Applicants thank Examiner Fearer for discussing the 35 U.S.C. §103(a) rejections on May 30, 2008 with Applicants' attorney, Bobby Voigt. Examiner Fearer agreed to allow claims 2-5 and 7, with the present claim amendments, as discussed herein, provided that the Examiner does not find new relevant art in a subsequent search.

As was discussed with Examiner Fearer on May 30, 2008, the rejections under 35 U.S.C. §103(a) in connection with pending claims 2-5 and 7 are overcome by including the aspect in claim 2 of bundling information regarding a series of closed connections by said network processor, wherein said bundling information occurs after a particular number of connections have been closed; and transmitting said bundled message regarding said series of closed connections to said control processor by said network processor.

Applicants enclose herewith the arguments that were presented during the discussion as well as included further arguments to clarify the distinguishing features.

Applicants respectfully assert that Berg and Colby, taken singly or in combination, do not teach "bundling information regarding a series of closed connections by said network processor, wherein said bundling information occurs after a particular number of connections have been closed" as recited in claim 2. The Examiner cites paragraphs [0064 and 0159] of Berg as teaching the above-cited claim limitations. Office Action (5/21/2008), pages 5-6. Applicants respectfully traverse.

Berg instead teaches that each of the n servers and the redirector device includes intelligent network interface controller ("iNIC") circuitry. [0064]. Berg further teaches that if the selected server is a different server (i.e., not the iNIC's server), the iNIC migrates the connection endpoint to the selected server. [0159].

Hence, Berg teaches that each server includes iNIC circuitry which migrates the connection endpoint to the selected server if the selected server is a different server.

There is no language in the cited passages that teaches bundling information regarding a series of closed connections. Neither is there any language in the cited

passages that teaches bundling information regarding a series of closed connection by a network processor. Neither is there any language in the cited passages that teaches that bundling information occurs after a particular number of connections have been closed. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 2, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Applicants further assert that Berg and Colby, taken singly or in combination, do not teach "transmitting said bundled message regarding said series of closed connections to said control processor by said network processor" as recited in claim 2. The Examiner cites paragraphs [0064 and 0159] of Berg as teaching the above-cited claim limitations. Office Action (5/21/2008), pages 5-6. Applicants respectfully traverse.

As stated above, Berg instead teaches that each server includes iNIC circuitry which migrates the connection endpoint to the selected server if the selected server is a different server.

There is no language in the cited passages that teaches transmitting a bundled message. Neither is there any language in the cited passages that teaches transmitting a bundled message regarding the series of closed connections. Neither is there any language in the cited passages that teaches transmitting a bundled message regarding the series of closed connections to the control processor. Neither is there any language in the cited passages that teaches transmitting a bundled message regarding the series of closed connections to the control processor by the network processor.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 2, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

I. REJECTIONS UNDER 35 U.S.C. §103(a):

The Examiner has rejected claims 2-7 and 20 under 35 U.S.C. 103(a) as being unpatentable over Berg in view of Colby. As discussed above, claims 6 and 20 were

cancelled to expedite the issuance of claims 2-5 and 7. The reasons for the allowance of claims 2-5 and 7 are provided above to aid the Examiner.

II. CONCLUSION:

As a result of the foregoing, it is asserted by Applicants that claims 2-5 and 7 in the Application are in condition for allowance, and Applicants respectfully request an allowance of such claims. Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

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